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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,432	02/23/2004	Don K. Wooten	BHA465	6319
44088	7590	03/09/2005	EXAMINER	
SEAN KAUFHOLD P. O. BOX 131447 CARLSBAD, CA 92013			HALE, GLORIA M	
			ART UNIT	PAPER NUMBER
			3765	
DATE MAILED: 03/09/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

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# Office Action Summary

Application No.

10/783,432

Applicant(s)

DON K. WOOTEN

Examiner

Gloria Hale

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12-10-04 Amendment.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 5-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Lee (US 4792471).

Lee discloses a body covering camouflaging assembly comprising a body covering including a pant (58) and shirt (56) combination (col. 3, lines 30-32 and figure 1); a plurality of flexible panels, leaves (30) sized as generally claimed (see figure 1 where the sizes included those claimed when viewed relative to other components in the figure); attached to the garments by a plurality of couplers including the strip (10), hook and loop fasteners (48,52) and snaps (44,46,26,28). (See Lee, figure 1 and col. 2, line 28 – col. 3, line 36). The pant and shirt also contain snaps (26,28) at different locations and which can be hook and loop fasteners (See col. 3, lines 30-36). The leaves (30) themselves include hooks (50) on patch (48) which can be attached to loops on the garments when the substituting the snaps 26,28 on the garment as stated above and in the referred col. 3, lines 30-36). The leaves that contain snaps 44 can also be mated to the snaps on the garment (26,28) as seen on the pants in figure 1. Nothing precludes the wearer from directly attaching the leaves to the garment since both the leaves and

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the pants include the mating snap components. The snap fasteners are randomly placed over the shirt and pant garments and may be substituted with the hook and loop fastener components as indicated and discussed above. (See Lee figures 1 and 2). Lee discloses the panels (30) as being leaves, which are irregularly shaped and colored as claimed, and which are patterned after common leaves such as oak or ferns etc. (See Lee, col. 2, lines 40-50).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-4 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee (US 4,792,471) in view of Sesselman (US 6,134,718).

Lee discloses the invention substantially as claimed except for the body covering including gloves, a hat and a mask. Sesselman discloses a camouflaging garment body covering system including a hat (12), gloves (20) and a face mask (14) as seen in figure 1 and discussed in col. 3, lines 55-60. Accordingly it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the garment assembly of Lee with the teaching of Sesselman to include other body covering garment

components such as a hat, gloves and mask in order to disguise and cover as much as the wearer's body as possible from the game that is being hunted by the wearer.

### ***Response to Arguments***

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Applicant's arguments filed 12-10-04 have been fully considered but they are not persuasive..

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., that the panels are evenly dispersed and further that the panels are directly attached to the clothing item as stated on page 5 of the Remarks of applicant's response are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In regard to applicant's response on page 5 and 6 concerning "encumbrance" applicant's remarks are just opinion and do not have supporting evidence and is

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unsubstantiated. Lee's garment is for use by a hunter as stated in Lee's title. Further a hunter using Lee's garment would use a gun or bow and arrow since hunters use such devices. The strips of Lee are adjustably placed about the hunter and encumbrance can be avoided by the adjustability of the strips. The leaves of Lee can be placed anywhere on the strip as desired and therefore would be "selectively" placed on the clothing using the strips which can be adjustably lowered and elevated. Lee's "plurality of couplers" are the strips and the snap fastener components and the panels are the leaves as claimed. Applicant has argued more than what has been claimed as discussed above. The claim does not state that the leaves are directly attached to the garment, that the panels are leaves or that they are "evenly distributed". The Lee garment discloses the claimed components as discussed above. Sesselman also discloses a camouflage garment as stated in the rejection above.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria Hale whose telephone number is 703-308-1282. The examiner can normally be reached on Tuesday-Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Gloria Hale  
Primary Examiner  
Art Unit 3765

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